

## **Ordinance 06-14**

### **AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WESTFIELD, INDIANA**

**An ordinance concerning the refunding by the Town of Westfield of its 1997 issue designated Sewage Works Revenue Bonds of 1997; authorizing the issuance of Sewage Works Refunding Revenue Bonds of 2006 for such purpose; providing for the collection, segregation and distribution of the revenues of the sewage works and the safeguarding of the interests of the owners of the Sewage Works Refunding Revenue Bonds of 2006; other matters connected therewith; and repealing ordinances inconsistent herewith.**

**WHEREAS**, the Town of Westfield, Indiana (the "Town") has heretofore established, constructed and financed a municipal sewage works and now owns and operates the sewage works pursuant to IC 36-9-23 et seq., and other applicable laws; and

**WHEREAS**, the Town Council of the Town (the "Council") finds that certain hereinafter described outstanding bonds of the sewage works should be refunded to obtain a reduction in interest payments to effect a savings to the Town; that the refunding of those outstanding bonds, together with redemption premium and accrued interest thereon and including all costs related to the refunding, will require funds not to exceed \$7,500,000, that the total cost of the refunding cannot be provided for out of funds of the sewage works now on hand and the refunding should be accomplished by the use of certain funds on hand and the issuance of revenue bonds of the sewage works; and

**WHEREAS**, the Council finds that there are now outstanding bonds issued on account of the construction of improvements and additions to the Town's sewage works and payable out of the revenues therefrom designated "Sewage Works Revenue Bonds of 1997" dated March 1, 1997 (the "1997 Bonds"), originally issued in the amount of \$8,000,000, now outstanding in the amount of \$7,200,000, and maturing annually over a period ending September 1, 2019, which 1997 Bonds

constitute a first charge upon the Net Revenues of the sewage works on a parity with the Town's Sewage Works Revenue Bonds of 2002 and Sewage Works Revenue Bonds of 2004 (together, the "Outstanding Bonds"); and

**WHEREAS**, the Council finds that the 1997 Bonds (the "Refunded Bonds") should be refunded pursuant to the provisions of IC 5-1-5 to enable the Town to obtain a reduction in interest payments to effect a savings to the Town; and

**WHEREAS**, the Council finds that it is advisable to issue its refunding revenue bonds in an amount not to exceed \$7,500,000 and to use the proceeds, together with funds on hand to refund the Refunded Bonds, and to pay for all costs related to the refunding and the issuance of the bonds hereunder; and

**WHEREAS**, the Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of revenue bonds have been complied with in accordance with the provisions of IC 5-1-5 and IC 36-9-23 et seq. (collectively, the "Act").

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WESTFIELD THAT:

Sec. 1. Issuance of Refunding Bonds. (a) The Town, being the owner of and engaged in operating a sewage works supplying the Town, its inhabitants, and the residents adjacent thereto, with sewage disposal and treatment services, now finds it necessary to provide funds for refunding the Refunded Bonds thereby reducing its interest payments and effecting a savings, as reported by the Town's financial advisor, O. W. Krohn & Associates, LLP. The terms "sewage works," "sewage works system," "works," "system," and words of like import where used in this Ordinance shall be construed to mean and include the existing sewage works system and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions and

improvements thereto and replacements thereof now or at any time hereafter constructed or acquired.

(b) The Town shall issue its "Sewage Works Refunding Revenue Bonds of 2006" (the "Refunding Bonds") in an aggregate principal amount not to exceed \$7,500,000 for the purpose of procuring funds to be applied to the refunding of the Refunded Bonds, the payment of costs of issuance, and all other costs related to the refunding. The Town shall apply moneys currently held for the payment of debt service on the Refunded Bonds to the refunding as provided in Section 8.

The Refunding Bonds may be issued in one (1) or more series. The Refunding Bonds shall be issued in the denomination of Five Thousand Dollars (\$5,000) each or integral multiples thereof, numbered consecutively from 1 upward, dated as of the date of closing and interest shall be payable semiannually on March 1 and September 1 in each year, beginning on September 1, 2006. The Refunding Bonds shall be sold at a price of not less than 99% of the par value thereof. The Refunding Bonds shall be payable in lawful money of the United States of America at the principal office of the Paying Agent (as hereinafter defined) and such Refunding Bonds shall bear interest at a rate or rates not exceeding 5.5% per annum and mature annually, or shall be subject to mandatory sinking fund redemption if term bonds are issued on September 1 of each year over a period ending not later than September 1, 2019, and in such amounts which will be of the most benefit to the Town as practicable with \$5,000 denominations.

Sec. 2. Registrar and Paying Agent. The Clerk-Treasurer is hereby authorized to contract with a qualified financial institution to serve as Registrar and Paying Agent for the Refunding Bonds (the "Registrar" or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the Refunding Bonds. The Clerk-Treasurer is hereby authorized to enter into such

agreements or understandings with the Registrar as will enable the institution to perform the services required of a registrar and paying agent. The Clerk-Treasurer is further authorized to pay such fees as the Registrar may charge for the services it provides as Registrar and Paying Agent and such fees may be paid from the Sinking Fund established to pay the principal of and interest on the Refunding Bonds as fiscal agency charges.

The principal of the Refunding Bonds shall be payable at the principal corporate trust office of the Paying Agent. All payments of interest on the Refunding Bonds shall be paid by check, mailed one (1) business day prior to the interest payment date to the registered owners thereof as the names appear as of the fifteenth (15<sup>th</sup>) day of the month preceding the interest payment date and at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner. All payments on the Refunding Bonds shall be made in any coin or currency of the United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

Each Refunding Bond shall be transferable or exchangeable only upon the books of the Town kept for that purpose at the principal corporate trust office of the Registrar by the registered owner in person, or by its attorney duly authorized in writing, upon surrender of such Refunding Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or its attorney duly authorized in writing, and thereupon a new fully registered Refunding Bond or Refunding Bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefore. The costs of such transfer or exchange shall be borne by the Town except for any tax or governmental charge required to be paid with respect to the transfer or exchange, which taxes or governmental charges are payable

by the person requesting such transfer or exchange. The Town, Registrar and Paying Agent for the Refunding Bonds may treat and consider the person in whose name such Refunding Bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving thirty (30) days' notice in writing to the Town and by first class mail to each registered owner of the Refunding Bonds then outstanding, and such resignation will take effect at the end of such thirty (30) day period or upon the earlier appointment of a successor registrar and paying agent by the Town. Any such notice to the Town may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the Town, in which event the Town may appoint a successor registrar and paying agent. The Town shall notify each registered owner of the Refunding Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the Refunding Bonds shall be deemed to be given when mailed by first class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar.

Upon appointment of any successor registrar and paying agent by the Town, the Clerk-Treasurer is authorized and directed to enter into such agreements and understandings with such successor registrar and paying agent as will enable the institution to perform the services required of a registrar and paying agent for the bonds. The Clerk-Treasurer is further authorized to pay such fees as the successor registrar and paying agent and such fees may be paid from the Sewage Works Sinking Fund created in Section 14 hereof. Any predecessor registrar and paying agent shall deliver all of the Refunding Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent.

Interest on the Refunding Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the Refunding Bonds unless the Refunding Bonds are authenticated after the fifteenth (15<sup>th</sup>) day of the month preceding an interest payment date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the Refunding Bonds are authenticated on or before August 15, 2006, in which case they shall bear interest from the original date until the principal shall be fully paid.

Sec. 3. Authorization of Book-Entry Bonds. The Refunding Bonds may initially be issued and held in book-entry form on the books of the central depository system, Depository Trust Company, its successors, or any successor central depository system appointed by the Town from time to time (the "Clearing Agency"), without physical distribution of bonds to the public. One (1) definitive Refunding Bond of each maturity shall be delivered to the Clearing Agency and held in its custody. The Town and the Registrar and Paying Agent may, in connection therewith, do or perform or cause to be done or performed any acts or things not adverse to the rights of the holders of the Refunding Bonds as are necessary or appropriate to accomplish or recognize such book-entry form Refunding Bonds.

So long as the Refunding Bonds remain and are held in book-entry form on the books of a Clearing Agency, then (1) any such Refunding Bond may be registered upon the registration record kept by the Registrar in the name of such Clearing Agency, or any nominee thereof, including Cede & Co., as nominee of Depository Trust Company; (2) the Clearing Agency in whose name such Refunding Bond is so registered shall be, and the Town and the Registrar and Paying Agent may deem and treat such Clearing Agency as, the absolute owner and holder of such Refunding Bond for all purposes of this Ordinance, including, without limitation, receiving

payment of the principal of and interest and premium, if any, on such Refunding Bond, the receiving of notice and giving of consent; (3) neither the Town nor the Registrar and Paying Agent shall have any responsibility or obligation hereunder to any direct or indirect participant, within the meaning of Section 17A of the Securities Exchange Act of 1934, as amended, of such Clearing Agency, or any person on behalf of which, or otherwise in respect of which, any such participant holds any interest in any Refunding Bond, including, without limitation, any responsibility or obligation hereunder to maintain accurate records of any interest in any Refunding Bond or any responsibility or obligation hereunder with respect to the receiving of payment of principal of or interest or premium, if any, on any Refunding Bond, the receiving of notice or the giving of consent; and (4) the Clearing Agency is not required to present any Refunding Bond called for partial redemption prior to receiving payment so long as the Registrar and the Clearing Agency have agreed to the method for noting such partial redemption.

If the Town receives notice from the Clearing Agency which is currently the registered owner of the Refunding Bonds to the effect that such Clearing Agency is unable or unwilling to discharge its responsibility as a Clearing Agency for the Refunding Bonds or the Town elects to discontinue its use of such Clearing Agency as a Clearing Agency for the Refunding Bonds, then the Town and Registrar and Paying Agent each shall do or perform or cause to be done or performed all acts or things, not adverse to the rights of the holders of the Refunding Bonds, as are necessary or appropriate to discontinue use of such Clearing Agency as a Clearing Agency for the Refunding Bonds and to transfer the ownership of each of the Refunding Bonds to such person or persons, including any other Clearing Agency, as the holders of the Refunding Bonds may direct in accordance with this Ordinance. Any expenses of such discontinuance and transfer, including expenses of printing new certificates to evidence the Refunding Bonds, shall be paid by the Town.

So long as the Refunding Bonds remain and are held in book-entry form on the books of a Clearing Agency, the Registrar shall be entitled to request and rely upon a certificate or other written representation from the Clearing Agency or any participant or indirect participant with respect to the identity of any beneficial owner of Refunding Bonds as of a record date selected by the Registrar. For purposes of determining whether the consent, advice, direction or demand of a registered owner of a Refunding Bond has been obtained, the Registrar shall be entitled to treat the beneficial owners of the Refunding Bonds as the bondholders and any consent, request, direction, approval, objection or other instrument of such beneficial owner may be obtained in the fashion described in this Ordinance.

So long as the Refunding Bonds remain and are held in book-entry form on the books of Depository Trust Company, the provisions of its standard form of Letter of Representations, if executed in connection with the issuance of the Refunding Bonds, as amended and supplemented, or any successor agreement shall control on the matters set forth therein. The Clerk-Treasurer is authorized to execute and deliver such a Letter of Representations. The Registrar, by accepting the duties of Registrar under this Ordinance, agrees that it will undertake the duties of agent set forth therein and that those duties to be undertaken by either the agent or the issuer shall be the responsibility of the Registrar. Further, so long as the Refunding Bonds remain and are held in book-entry form, the provisions of Section 3 of this Ordinance shall control over conflicting provisions in any other section of this Ordinance.

Sec. 4. Redemption of Refunding Bonds. The Refunding Bonds maturing on and after September 1, 2016 are redeemable at the option of the Town on March 1, 2016, or any date thereafter, on thirty (30) days' notice, in whole or in part, in inverse order of maturity and by lot within a maturity, at face value, plus accrued interest to the date of redemption.



If any Refunding Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Refunding Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the Town, any Refunding Bonds maturing as term bonds which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Registrar for cancellation or purchased for cancellation by the Paying Agent and not theretofore applied as a credit against any redemption obligation. Each Refunding Bond maturing as a term bond so delivered or cancelled shall be credited by the Paying Agent at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory sinking fund date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of the Refunding Bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Paying Agent shall credit only such Refunding Bonds maturing as term bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date.

If less than all of the Refunding Bonds are called for redemption at one time, the Refunding Bonds shall be redeemed in inverse order of maturity and by lot within a maturity. Each Five Thousand Dollars (\$5,000) principal amount shall be considered a separate bond for purposes of optional and mandatory redemption. If some Refunding Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Refunding Bonds for optional redemption before selecting the Refunding Bonds by lot for the mandatory sinking fund redemption.

In either case, notice of such redemption shall be given at least thirty (30) days prior to the date fixed for redemption by mail unless the notice is waived by the registered owner of a

Refunding Bond. Such notice shall be mailed to the address of the registered owners as shown on the registration records of the Town as of the date which is forty-five (45) days prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification of the Refunding Bonds called for redemption. The place of redemption shall be determined by the Town. Interest on the Refunding Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the principal office of the Paying Agent to pay the redemption price on the date so named. Coincidentally with the payment of the redemption price, the Refunding Bonds so called for redemption shall be surrendered for cancellation.

Sec. 5. Execution and Negotiability. Each of the Refunding Bonds shall be executed in the name of the Town by the manual or facsimile signature of the President of the Council and attested by the manual or facsimile signature of its Clerk-Treasurer, and the seal of the Town shall be affixed, imprinted or impressed to or on each of the Refunding Bonds manually, by facsimile or any other means; and these officials, by the execution of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures the facsimile signatures appearing on the Refunding Bonds. In case any officer whose signature or facsimile signature appears on the Refunding Bonds shall cease to be such officer before the delivery of the Refunding Bonds, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

The Refunding Bonds shall have all of the qualities and incidents of negotiable instruments under the laws of the State of Indiana, subject to the provisions for registration herein.

The Refunding Bonds shall also be authenticated by the manual signature of the Registrar and no Refunding Bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.

Sec. 6. Form of Bonds. The form and tenor of the Refunding Bonds shall be substantially as follows, all blanks to be filled in properly prior to delivery:

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF HAMILTON

Interest Rate

Maturity Date

Original Date

Authentication Date

CUSIP

TOWN OF WESTFIELD  
SEWAGE WORKS REFUNDING REVENUE  
BOND OF 2006

REGISTERED OWNER:

PRINCIPAL SUM:

The Town of Westfield, in Hamilton County, State of Indiana, for value received, hereby promises to pay to the Registered Owner named above or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above on the Maturity Date set forth above (unless this bond be subject to and be called for redemption prior to maturity as hereinafter provided), and to pay interest hereon at the Interest Rate per annum stated above from the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the fifteenth date of the month preceding an interest payment date and on or before such interest payment date in which case it shall bear interest from such interest payment date or unless this bond is authenticated on or before August 15, 2006, in which case it shall bear interest from the Original Date, until the principal is paid, which interest is payable semiannually on the first days of March and September in each year, beginning on September 1, 2006.

The principal of this bond is payable at the principal office of \_\_\_\_\_  
\_\_\_\_\_(the "Registrar" or "Paying Agent"), in the City of Indianapolis, Indiana. All payments of interest on this bond shall be paid by check, mailed one business day prior to the interest payment date to the registered owner hereof as of the fifteenth day of the month preceding such interest payment date at the address as it appears on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by the registered owner. All payments on the bond shall be made in any coin or currency of the United States of

America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

THE TOWN SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE INTEREST HEREON EXCEPT FROM THE HEREINAFTER DESCRIBED SPECIAL FUND, AND NEITHER THIS BOND NOR THE ISSUE OF WHICH IT IS A PART SHALL IN ANY RESPECT CONSTITUTE A CORPORATE INDEBTEDNESS OF THE TOWN WITHIN THE PROVISIONS AND LIMITATIONS OF THE CONSTITUTION OF THE STATE OF INDIANA.

The terms and provisions of this bond are continued on the reverse side hereof and such terms and provisions shall for all purposes have the same effect as though fully set forth at this place.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the execution, issuance and delivery of this bond have been done and performed in regular and due form as provided by law.

This bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been executed by an authorized representative of the Registrar.

This bond is one of an authorized issue of bonds of the Town of Westfield, of like date, tenor and effect, except as to rates of interest and dates of maturity; aggregating

\_\_\_\_\_ Dollars (\$\_\_\_\_\_); numbered consecutively from 1 up; issued for the purpose of refunding of the 1997 Bonds (the "Refunded Bonds"). This bond is issued pursuant to an Ordinance adopted by the Council of the Town on the \_\_\_\_ day of \_\_\_\_\_, 2006, entitled "An Ordinance concerning the refunding by the Town of Westfield of its 1997 issue designated Sewage Works Revenue Bonds of 1997; authorizing the issuance of Sewage Works Refunding Revenue Bonds of 2006 for such purpose; providing for the collection, segregation and distribution of the revenues of the sewage works and the safeguarding of the interests of the owners of the Sewage Works Refunding Revenue Bonds of 2006; other matters connected therewith; and repealing ordinances inconsistent herewith" (the "Ordinance"), and in accordance with the provisions of Indiana law, including without limitation Indiana Code 5-1-5 and Indiana Code 36-9-23 (hereinafter collectively, the "Act"), the proceeds of which bonds are to be applied solely to the refunding including the incidental expenses incurred in connection therewith.

Pursuant to the provisions of the Act and the Ordinance, the principal of and interest on this bond and all other bonds of said issue and any bonds hereafter issued on a parity therewith are payable solely from the Sewage Works Sinking Fund created by the Ordinance (the "Sinking Fund") to be provided from the Net Revenues (herein defined as the gross revenues of the sewage works of the Town remaining after the payment of the reasonable expenses of operation, repair and maintenance) of the sewage works now owned or hereafter acquired by the Town.

Pursuant to the Ordinance and the Escrow Agreement defined therein, the Town of Westfield has set aside securities (purchased from proceeds of the bonds of this issue and funds on hand of the sewage works), and certain cash in a Trust Account to provide payment of the principal

of and interest and redemption premium, if any, on the Refunded Bond due on September 1, 2006 (the "September Refunded Bond") by the purchase of obligations of the United States of America. If there are insufficient funds held under the Escrow Agreement to pay the September Refunded Bond, the September Refunded Bond shall, to that extent, be paid from Net Revenues prior and superior to the claim of the bond.

The Town of Westfield irrevocably pledges the entire Net Revenues of the sewage works to the prompt payment of the principal of and interest on the bonds authorized by the Ordinance, of which this is one, and any bonds ranking on a parity therewith, to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for services rendered by the utility as are sufficient in each year for the payment of the proper and reasonable expenses of operation, repair and maintenance of the sewage works and for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Ordinance. If the Town or the proper officers thereof shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this bond, the owner of this bond shall have all of the rights and remedies provided for in the Act, including the right to have a receiver appointed to administer the works and to charge and collect rates sufficient to provide for the payment of this bond and the interest hereon.

The Town of Westfield further covenants that it will set aside and pay into its Sinking Fund monthly, as available, or more often if necessary, a sufficient amount of the Net Revenues of the works for payment of (a) the interest on all bonds which by their terms are payable from the revenues of the sewage works, as such interest shall fall due, (b) the necessary fiscal agency charges for paying bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of the sewage works, as such principal shall fall due, and (d) an additional amount as a margin of safety to create and maintain the debt service reserve required by this Ordinance. Such required payments shall constitute a first charge upon all the Net Revenues of the sewage works subject to Section 16 of the Ordinance.

The bonds maturing on and after September 1, 2016 are redeemable at the option of the Town on March 1, 2016, or any date thereafter, on thirty (30) days' notice, in whole or in part, in inverse order of maturity and by lot within a maturity, at face value, plus accrued interest to the date fixed for redemption.

[The bonds maturing on \_\_\_\_\_ 1, \_\_\_\_ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof plus accrued interest, on the dates and in the amounts set forth below:

Date

Amount

\*

\*Final Maturity]

If less than all of the bonds are called for redemption at one time, the bonds shall be redeemed in inverse order of maturity and by lot within a maturity. Each Five Thousand Dollars (\$5,000) principal amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. [If some bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the bonds for optional redemption before selecting the bonds by lot for the mandatory sinking fund redemption.]

Notice of such redemption shall be mailed to the address of the registered owner as shown on the registration records of the Town as of the date which if forty-five (45) days prior to such redemption date not less than thirty (30) days prior to the date fixed for redemption unless the notice is waived by the registered owner of this bond. The notice shall specify the date and place of redemption and sufficient identification of the bonds called for redemption. The place of redemption may be determined by the Town. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

If this bond shall not be presented for payment or redemption on the date fixed therefor, the Town may deposit in trust with its depository bank, an amount sufficient to pay such bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the Town shall have no further obligation or liability in respect thereto.

This bond is transferable or exchangeable only upon the books of the Town kept for that purpose at the principal corporate trust office of the Registrar by the registered owner hereof in person, or by his attorney duly authorized in writing, upon surrender of this bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or his attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in a authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or to the registered owner, as the case may be, in exchange therefore. This bond may be transferred without cost to the registered owner except for any tax or governmental charge required to be paid with respect to the transfer. The Town, the Registrar, the Paying Agent and any other registrar or paying agent for this bond may treat and consider the person in whose name this bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon.

This bond is subject to defeasance prior to redemption or payment as provided in the Ordinance referred to herein. THE OWNER OF THIS BOND, BY THE ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THIS ORDINANCE. The Ordinance may be amended without the consent of the owners of the bonds as provided in the Ordinance if the Council determines, in its sole discretion, that the amendment shall not adversely affect the rights of any of the owners of the bonds.

The Town of Westfield has designated the bonds as qualified tax-exempt obligations to qualify the bonds for the \$10,000,000 exception from the provision of Section 265(b) of the Internal

Revenue Code of 1986 relating to the disallowance of 100% of the deduction for interest expense allocable to tax-exempt obligations.

The bonds maturing in any one year are issuable only in fully registered form in the denomination of \$5,000 or any integral multiple thereof.

IN WITNESS WHEREOF, the Town of Westfield, in Hamilton County, Indiana, has caused this bond to be executed in its corporate name by the manual or facsimile signature of the President of the Council, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk-Treasurer.

TOWN OF WESTFIELD, INDIANA

By: \_\_\_\_\_  
President, Town Council

[SEAL]

Attest:

\_\_\_\_\_  
Clerk-Treasurer

## REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Ordinance.

\_\_\_\_\_  
as Registrar

By: \_\_\_\_\_  
Authorized Representative

## ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ this bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney, to transfer the within bond in the books kept for the registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

The following abbreviations, when used in the inscription on the face of this bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN. COM.                      as tenants in common

TEN. ENT.                      as tenants by the entireties

JT. TEN.                      as joint tenants with right of survivorship and not as tenants in common

UNIF. TRANS.  
MIN. ACT

\_\_\_\_\_  
(Cust.)                      Custodian                      (Minor)

under Uniform Transfers to Minors Act of

\_\_\_\_\_  
(State)

Additional abbreviations may also be used although not in the above list.



Sec. 7. Authorization for Preparation and Sale of the Refunding Bonds. (a) the Clerk-Treasurer is hereby authorized and directed to have the Refunding Bonds prepared, and the President of the Council and Clerk-Treasurer are hereby authorized and directed to execute and attest the Refunding Bonds in the form and manner provided herein. The Clerk-Treasurer is hereby authorized and directed to deliver the Refunding Bonds to City Securities Corporation (the "Underwriter") in accordance with the Purchase Contract (the "Purchase Contract") between the Town and the Underwriter. The President of the Council and Clerk-Treasurer are hereby authorized to execute the Purchase Contract with terms consistent with this Ordinance, including a principal amount, interest rate, maturity schedule, and term bond mandatory redemptions, if any.

(b) The Clerk-Treasurer is hereby authorized to appoint a financial institution to serve as escrow trustee ("Escrow Trustee") for the September Refunded Bond in accordance with the terms of the Escrow Agreement, between the Town and the Escrow Trustee ("Escrow Agreement"). The President of the Council and the Clerk-Treasurer are hereby authorized and directed to complete, execute and attest the same on behalf of the Town so long as its provisions are consistent with this Ordinance and the Purchase Contract.

(c) The Refunding Bonds, when fully paid for and delivered to the Underwriter, shall be binding special revenue obligations of the Town, payable out of the Net Revenues (herein defined as gross revenues after deduction only for the payment of the reasonable expenses of operation, repair and maintenance of the sewage works, to be set aside into the Sewage Works Sinking Fund created in Section 14. The proper officers of the Town are hereby directed to sell the Refunding Bonds to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this Ordinance.

(d) Distribution of an Official Statement (preliminary and final) prepared by O. W. Krohn & Associates, LLP, on behalf of the Town, is hereby approved and the President of the Council is authorized and directed to execute the final Official Statement on behalf of the Town in a form consistent with this Ordinance and the Purchase Contract. The President of the Council is hereby authorized to designate the Official Statements as "nearly final" for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission.

Sec. 8. Refunding of the Refunded Bonds and Costs of Issuance. Concurrently with the delivery of the Refunding Bonds, the Clerk-Treasurer shall acquire, with the proceeds of the Refunding Bonds and cash on hand, direct obligations of or obligations the principal and interest on which are unconditionally guaranteed by, the United States of America (the "Government Obligations") to be used, together with certain cash from the proceeds of the Refunding Bonds and cash on hand as set forth in the Escrow Agreement, to refund the September Refunded Bond all as set forth in the Escrow Agreement. In order to refund the September Refunded Bond, the Clerk-Treasurer shall deposit Government Obligations and certain cash with the Escrow Trustee under the Escrow Agreement in an amount sufficient to provide moneys for the payment of the principal of and interest and redemption premium on the September Refunded Bond until September 1, 2006, the earliest date upon which the September Refunded Bond may be called for redemption.

The Clerk-Treasurer shall obtain a verification of an accountant as to the sufficiency of the funds deposited in the Trust Account under the Escrow Agreement to accomplish said refunding.

Costs of issuance of the Refunding Bonds not otherwise paid shall be paid from the remaining proceeds by the Clerk-Treasurer. When all the costs of issuance of the Refunding Bonds have been paid, the Clerk-Treasurer shall then transfer any amount then remaining from the proceeds of the Refunding Bonds to the Sinking Fund herein created.

Sec. 9. Accrued Interest. The accrued interest received at the time of delivery of the Refunding Bonds, if any, shall be deposited in the Sinking Fund created in Section 14, to be credited to the Bond and Interest Account of the Sinking Fund.

Sec. 10. Financial Records and Accounts. The Town shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of the sewage works and all disbursements made therefrom and all transactions relating to the utility.

Sec. 11. Pledge of Net Revenues. The interest on and the principal of the Refunding Bonds issued pursuant to the provisions of this Ordinance, and any bonds hereafter issued on a parity therewith, shall constitute a first charge, subject to Section 16 hereof, on all the Net Revenues, and such Net Revenues are hereby irrevocably pledged to the payment of the interest on and principal of such Refunding Bonds, to the extent necessary for that purpose.

Sec. 12. Revenue Fund. All revenues derived from the operation of the sewage works and from the collection of sewer rates and charges shall be deposited in the Revenue Fund, hereby continued, and segregated and deposited as set forth in this Ordinance. Of these revenues, the proper and reasonable expenses of operation, repair and maintenance of the works shall be paid, the principal and interest of all bonds and fiscal agency charges of registrars or paying agents shall be paid, and the costs of replacements, extensions, additions and improvements shall be paid.

Sec. 13. Operation and Maintenance Fund. Moneys heretofore accumulated pursuant to the ordinance authorizing the Refunded Bonds in an amount equal to the expenses of operation, repair and maintenance of the sewage works for a two (2) month period, as calculated by the Clerk-Treasurer with the advice of the Town's financial advisor, shall be credited to and become a part of the Operation and Maintenance Fund continued hereby as of the date of the refunding of the

Refunded Bonds. On the last day of each calendar month, revenues of the sewage works shall thereafter be transferred from the Revenue Fund to the Operation and Maintenance Fund. The balance maintained in this Fund shall be sufficient to pay the expenses of operation, repair and maintenance for the then next succeeding two (2) calendar months. The moneys credited to this Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the sewage works on a day-to-day basis. Any monies in said Fund may be transferred to the Sewage Works Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the sewage works.

Sec. 14. Sewage Works Sinking Fund. (a) A fund designated "Sewage Works Sinking Fund" was established and designated pursuant to the ordinance authorizing the Refunded Bonds and is hereby continued as the sinking fund for the payment of the principal of and interest on revenue bonds which by their terms are payable from the Net Revenues of the sewage works and the payment of any fiscal agency charges in connection with the payment of bonds. There shall be set aside and deposited in the Sinking Fund, as available, and as hereinafter provided, a sufficient amount of the Net Revenues of the sewage works to meet the requirements of the Bond and Interest Account and Reserve Account hereby continued in the Sinking Fund. Such payments shall continue until the balances in the Debt Service Account and the Reserve Account equal the interest on and the principal of all of the then outstanding bonds of the sewage works to their final maturity.

(b) Debt Service Account. There shall be credited on the last day of each calendar month from the Revenue Fund to the Debt Service Account an amount of the Net Revenues equal to at least one-sixth (1/6) of the interest and at least one-twelfth (1/12) principal on all then outstanding bonds payable on the then next succeeding principal and interest payment date until the amount of interest and principal payable on the then next succeeding interest and principal payment date shall

have been so credited. There shall similarly be credited to the account any amount necessary to pay the bank fiscal agency charges for paying principal of and interest on outstanding bonds as the same become payable. The Town shall, from the sums deposited in the Sinking Fund and credited to the Debt Service Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the interest and principal on the due dates thereof together with the amount of bank fiscal agency charges.

(c) Reserve Account. Net Revenues of the sewage works shall be deposited into the Reserve Account of the Sewage Works Sinking Fund, continued hereby, monthly, as available, as a reasonable reserve and a protection against default, up to an amount equal to the reserve requirement for (a) the Outstanding Bonds, (b) the Refunding Bonds; and (c) any bonds hereafter issued and payable by their terms from the net revenues of the sewage works (the "Reserve Requirement"). The reserve requirement for the Refunding Bonds shall equal but not exceed the least of (i) maximum annual debt service on the Refunding Bonds, (ii) 125% of average annual debt service on the Refunding Bonds or (iii) 10% of the proceeds of the Refunding Bonds. An amount of Net Revenues shall be credited to the Reserve Account on the last day of each calendar month until the balance therein equals but does not exceed the Reserve Requirement. The Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the Outstanding Bonds and the Refunding Bonds and the moneys in the Reserve Account shall be used to pay current principal and interest on the Outstanding Bonds and the Refunding Bonds to the extent that moneys in the Bond and Interest Account are insufficient for purpose. Any deficiency in the balance maintained in the Reserve Account shall be made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. Any

interest earnings that accumulate in excess of the Reserve Requirement shall be considered revenues of the sewage works.

Sec. 15. Sewage Works Improvement Fund. Any excess revenues may be transferred or credited from the Revenue Fund to a fund designated the "Sewage Works Improvement Fund" and said Fund shall be used for improvements, replacements, additions and extensions of the sewage works. As of the date of the delivery of the Refunding Bonds, any other available and unrestricted moneys of the sewage works not otherwise deposited pursuant to the terms of this Ordinance shall be transferred to the Improvement Fund and used for sewage works capital improvements or for any other lawful purpose. Moneys in the Sewage Works Improvement Fund shall be transferred to the Sewage Works Sinking Fund if necessary to prevent a default in the payment of principal and interest on the then outstanding bonds or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the Reserve Account of the Sewage Works Sinking Fund or may be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation, repair and maintenance of the sewage works.

Sec. 16. Investment of Funds. The Sinking Fund shall be deposited in and maintained as a separate account or accounts from all other accounts of the Town. The Operation and Maintenance Fund and the Sewage Works Improvement Fund may be maintained in a single account, or accounts, but such account, or accounts, shall likewise be maintained separate and apart from all other accounts of the Town and apart from the Sinking Fund account or accounts. All moneys deposited in the accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly Indiana Code, Title 5, Article 13, as amended or supplemented, and in the event of such investment the income therefrom

shall become a part of the funds invested and shall be used only as provided in this Ordinance. Nothing in this section or elsewhere in this Ordinance shall be construed to require that separate bank accounts be established and maintained for the Funds and Accounts created by this Ordinance.

Sec. 17. Defeasance of the Refunding Bonds. If, where the Refunding Bonds or a portion thereof shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Refunding Bonds or a portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the Refunding Bonds or a portion thereof then outstanding shall be paid; or (i) sufficient moneys, or (ii) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, the principal of and the interest on which when due will provide sufficient moneys for such purpose, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the Refunding Bonds or any designated portion thereof issued hereunder shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the Town's sewage works.

Sec. 18. Rate Covenant. The Town covenants and agrees that it will establish and maintain just and equitable rates or charges for the use of and the service rendered by the works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses said sewage works by or through any part of the sewage system of the Town, or that in any way uses or is served by such works; that such rates or charges shall be sufficient in each year for the payment of the proper and reasonable expenses of operation, repair and maintenance of the works, and for the payment of the sums required to be paid into the Sinking Fund by the Act and this Ordinance. Such rates or charges shall, if necessary, be changed and readjusted from time to time so that the

revenues therefrom shall always be sufficient to meet the expenses of operation, repair and maintenance of the sewage works and the requirements of the Sinking Fund. The rates or charges so established shall reply to any and all use of such works by and service rendered to the Town and all departments thereof, and shall be paid by the Town or the various departments thereof as the charges accrue.

Sec. 19. Additional Bond Provisions. The Town reserves the right to authorize and issue additional bonds payable out of the Net Revenues of its sewage works ranking on a parity with the Refunding Bonds for the purpose of financing the cost of future additions, extensions and improvements to its sewage works, or to refund obligations, subject to the following conditions.

(a) All required payments into the Sinking Fund shall have been made in accordance with the provisions of this Ordinance, and the interest on and principal of all bonds payable from the Net Revenues of the sewage works shall have been paid in accordance with their terms.

(b) The Net Revenues of the sewage works in the fiscal year immediately preceding the issuance of any such bonds ranking on a parity with the Refunding Bonds shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds proposed to be issued; or, prior to the issuance of the parity bonds the sewage rates and charges shall be increased sufficiently so that increased rates and charges applied to the previous years' operations would have produced Net Revenues for said period equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of all bonds payable from the revenues of the sewage works, including the additional parity bonds proposed to be issued.

For purposes of this subsection, the records of the sewage works shall be analyzed and all showings prepared by a certified public accountant employed by the Town for that purpose.



(c) The interest on the additional parity bonds shall be payable semiannually on the first days of March and September and the principal on, or mandatory sinking fund redemptions for the additional parity bonds shall be payable annually on September 1.

Sec. 20. Further Covenants of the Town; Maintenance, Insurance, Pledge Not To Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interest of the owners of the Refunding Bonds, it is hereby specifically provided as follows:

(a) So long as any of the Refunding Bonds are outstanding, the Town shall at all times maintain the sewage works system in good condition, and operate the same in an efficient manner and at a reasonable cost.

(b) So long as any of the Refunding Bonds are outstanding, the Town shall maintain insurance on the insurable parts of the system, of a kind and in an amount such as is usually carried by private corporation engaged in a similar type of business. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana.

As an alternative to maintaining such insurance, the Town may maintain a self-insurance program with catastrophic or similar coverage so long as such program meets the requirements of any applicable laws or regulations and is maintained in a manner consistent with programs maintained by similarly situated municipalities.

All insurance or self-insurance proceeds shall be used either in replacing or restoring the property destroyed or damages, or shall be deposited in the Sinking Fund.

(c) So long as any of the Refunding Bonds are outstanding, the Town shall not mortgage, pledge or otherwise encumber the property and plant of its sewage works system, or any part thereof, and shall not sell, lease or otherwise dispose of any part of the same, excepting only

such machinery, equipment or other property as may be replaced, or shall no longer be necessary for use in connection with said utility.

(d) Except as otherwise specifically provided in Section 20 of this Ordinance, so long as any of the Refunding Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenues of the system shall be authorized, issued or executed by the Town, except such as shall be made junior and subordinate in all respects to the Refunding Bonds, unless all of the Refunding Bonds are redeemed or defeased coincidentally with the delivery of such additional bonds or other obligations.

(e) The Town shall take all actions or proceedings necessary and proper, to the extent permitted by law, to require connection of all property where liquid and solid waste, sewage, night soil or industrial waste is produced with available sanitary sewers. The Town shall, insofar as possible, and to the extent permitted by law, cause all such sanitary sewers to be connected with said sewage works.

(f) The provisions of this Ordinance shall constitute a contract by and between the Town and the Owners of the Refunding Bonds herein authorized, all the terms of which shall be enforceable by any bondholder by any and all appropriate proceedings in law or in equity. After the issuance of the Refunding Bonds, this Ordinance shall not be repealed, amended or modified in any respect which will adversely affect the rights or interests of the owners of the Refunding Bonds, nor shall the Council or any other board of the Town adopt any law, ordinance or resolution in any way adversely affecting the rights of the bondholders so long as any of the Refunding Bonds, or the interest thereon, remain outstanding or unpaid. Except in the case of changes described in Section 22(a)-(f), this Ordinance may be amended, however, without the consent of bondowners, if

the Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the Refunding Bonds.

(g) The provisions of this Ordinance shall be construed to create a trust in the proceeds of the sale of the Refunding Bonds herein authorized for the uses and purposes herein set forth, and the owners of the Refunding Bonds shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this Ordinance and of said governing Act. The provisions of this Ordinance shall also be construed to create a trust in the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of that Fund as in this Ordinance set forth. The owners of the Refunding Bonds shall have all the rights, remedies and privileges set forth in the provisions of the governing Act, including the right to have a receiver appointed to administer the sewage works in the event the Town shall fail or refuse to fix and collect sufficient rates and charges for those purposes, or shall fail or refuse to operate and maintain said system and to apply properly the revenues derived from the operation thereof, or if there be a default in the payment of the interest on or principal of the Refunding Bonds.

(h) None of the provisions of this Ordinance shall be construed as requiring the expenditure of any funds of the Town derived from any sources other than the proceeds of the Refunding Bonds and the operation of the sewage works system.

Sec. 21. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this section, and not otherwise, the others of not less than sixty-six and two-thirds percent (66 2/3 %) in aggregate principal amount of the Refunding Bonds issued pursuant to this Ordinance and then outstanding shall have the right from time to time, anything contained in this Ordinance to the contrary notwithstanding, to consent to and approve the adoption by the Council of the Town of such ordinance or ordinances supplemental hereto or amendatory hereof, as shall be

deemed necessary or desirable by the Town for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this Ordinance, or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting:

(a) An extension of the maturity of the principal of or interest on, or any mandatory sinking fund redemption date for, any Refunding Bond issued pursuant to this Ordinance; or

(b) A reduction in the principal amount of any Refunding Bond or the redemption premium or the rate of interest thereon; or

(c) The creation of a lien upon or a pledge of the revenues or Net Revenues of the sewage works ranking prior to the pledge thereof created by this Ordinance; or

(d) A preference or priority of any Refunding Bond or Refunding Bonds issued pursuant to this Ordinance over any other Refunding Bond or Refunding Bonds issued pursuant to the provisions of this Ordinance; or

(e) A reduction in the aggregate principal amount of the Refunding Bonds required for consent to such supplemental ordinance; or

(f) A reduction in the Reserve Requirement.

If the owners of not less than sixty-six and two-thirds percent (66 2/3 %) in aggregate principal amount of the Refunding Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk-Treasurer of the Town, no owner of any Refunding Bond issued pursuant to this Ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions

contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Council of the Town from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this Ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Ordinance of the Town and all owners of Refunding Bonds then outstanding, shall thereafter be determined, exercised and enforced in accordance with this Ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this Ordinance, the rights and obligations of the Town and the owners of the Refunding Bonds authorized by this Ordinance, and the terms and provisions of the Refunding Bonds and this Ordinance, or any supplemental or amendatory ordinance, may be modified or altered in any respect with the consent of the Town and the consent of the owners of all the Refunding Bonds then outstanding.

Sec. 22. Tax Covenants. In order to preserve the exclusion of interest on the Refunding Bonds from gross income for federal tax purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the date of issuance of the Refunding Bonds (the "Code") and as an inducement to purchasers of the Refunding Bonds, the Town represents, covenants and agrees that:

(a) No person or entity other than the Town or another state or local governmental unit will use proceeds of the Refunding Bonds or property financed by the Refunding Bond proceeds other than as a member of the general public. No person or entity other than the Town or another state or local governmental unit will own property financed by Refunding Bond proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or output contracts

or any other type of arrangement that differentiates that person's or entity's use of such property from use by the general public.

(b) No portion of the principal of or interest on the Refunding Bonds is (under the terms of the Refunding Bonds, this Ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the Town) in respect of such property or borrowed money used or to be used for a private business use.

(c) No Refunding Bond proceeds will be loaned to any person or entity other than another state or local governmental unit. No Refunding Bond proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the Refunding Bond proceeds.

(d) The Town will not take any action nor fail to take any action with respect to the Refunding Bonds that would result in the loss of the exclusion from gross income for federal tax purposes on the Refunding Bonds pursuant to Section 103 of the Code, nor will the Town act in any other manner which would adversely affect such exclusion.

(e) It shall not be an event of default under this Ordinance if the interest on any Refunding Bond is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the Refunding Bonds.

(f) The Town hereby covenants that it will rebate any arbitrage profits to the United States to the extent required by the Code and the regulations promulgated thereunder.

(g) These covenants are based solely on current law in effect and in existence on the date of delivery of such Refunding Bonds.

(h) The Town represents that:

- (i) The Refunding Bonds are not private activity bonds as defined in Section 141 of the Code;
- (ii) The Town hereby designates the Refunding Bonds as qualified tax-exempt obligations for purposes of Section 265(b) of the Code; and
- (iii) The reasonably anticipated amount of qualified tax-exempt obligations (including qualified 501(c)(3) obligations and tax-exempt leases but excluding other private activity bonds) which will be issued by the Town, and all entities subordinate to the Town during 2006 does not exceed \$10,000,000.
- (iv) The Town will not designate more than \$10,000,000 of qualified tax-exempt obligations during 2006.

Sec. 23. Noncompliance with Tax Covenants. Notwithstanding any other provisions of this Ordinance, the covenants and authorizations contained in this Ordinance (the "Tax Sections") which are designed to preserve the exclusion of interest on the Refunding Bonds from gross income under federal law (the "Tax Exemption") need not be complied with if the Town receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption.

Sec. 24. Bond Insurance Provisions. The President of the Council and the Clerk-Treasurer are hereby authorized, upon the advice of the Town's Financial Advisor to obtain Bond Insurance and a Bond Rating. As long as the Bond Insurance Policy shall be in full force

and effect, the Town and any Paying Agent agree to comply with the following provisions:

(a) In the event that, on the second Business Day, and again on the Business Day prior to the payment date on the Refunding Bonds, the Paying Agent has not received sufficient moneys to pay all principal of and interest on the Refunding Bonds due on the second following or following, as the case may be, Business Day, the Paying Agent shall immediately notify the Bond Insurer or its designee on the same Business Day by telephone or telegraph, confirmed in writing by registered or certified mail, of the amount of the deficiency.

(b) If the deficiency is made up in whole or in part prior to or on the payment date, the Paying Agent shall so notify the Bond Insurer or its designee.

(c) In addition, if the Paying Agent has notice that any Bondholder has been required to disgorge payments of principal or interest on the Refunding Bonds to a trustee in Bankruptcy or creditors or others pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes an avoidable preference to such Bondholder within the meaning of any applicable bankruptcy laws, then the Paying Agent shall notify the Bond Insurer or its designee of such fact by telephone or telegraphic notice, confirmed in writing by registered or certified mail.

(d) The Trustee (or Paying Agent) is hereby irrevocably designated, appointed, directed and authorized to act as attorney-in-fact for Holders of the Refunding Bonds as follows:

(i) If and to the extent there is a deficiency in amounts required to pay interest on the Refunding Bonds, the Paying Agent shall (a) execute and deliver to U.S. Bank Trust National Association or any other trust company designated by the Bond Insurer, or its successors under the Bond Insurance Policy (the "Insurance Paying



Agent"), in form satisfactory to the Insurance Paying Agent, an instrument appointing the Bond Insurer as agent for such Holders in any legal proceeding related to the payment of such interest and an assignment to the Bond Insurer of the claims for interest to which such deficiency relates and which are paid by the Bond Insurer, (b) receive as designee of the respective Holders (and not as Paying Agent) in accordance with the tenor of the Bond Insurance Policy payment from the Insurance Paying Agent with respect to the claims for interest so assigned, and (c) disburse the same to such respective Holders; and

- (ii) If and to the extent of a deficiency in amounts required to pay principal of the Refunding Bonds, the Paying Agent shall (a) execute and deliver to the Insurance Paying Agent in form satisfactory to the Insurance Paying Agent an instrument appointing the Bond Insurer as agent for such Holder in any legal proceeding relating to the payment of such principal and an assignment to the Insurer of any of the Bonds surrendered to the Insurance Paying Agent of so much of the principal amount thereof as has not previously been paid or for which moneys are not held by the Paying Agent and available for such payment (but such assignment shall be delivered only if payment from the Insurance Paying Agent is received), (b) receive as designee of the respective Holders (and not as Paying Agent) in accordance with the tenor of

the Bond Insurance Policy payment therefore from the Insurance  
Paying Agent, and (c) disburse the same to such Holders.

(e) Payments with respect to claims for interest on and the principal of Refunding Bonds disbursed by the Paying Agent from proceeds of the Bond Insurance Policy shall not be considered to discharge the obligation of the Town with respect to the Refunding Bonds, and the Bond Insurer shall become the owner of such unpaid Refunding Bond and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of this subsection or otherwise.

(f) Irrespective of whether any such assignment is executed and delivered, the Town and the Paying Agent hereby agree for the benefit of the Bond Insurer that:

- (i) They recognize that to the extent the Bond Insurer makes payments, directly or indirectly (as by paying through the Paying Agent), on account of principal of or interest on the Refunding Bonds, the Bond Insurer will be subrogated to the rights of such Holders to receive the amount of such principal and interest from the Town, with interest thereon as provided and solely from the sources stated in this Ordinance and the Bonds; and
- (ii) They will accordingly pay to the Bond Insurer the amount of such principal and interest (including principal and interest recovered under subparagraph (ii) of the first paragraph of the Bond Insurance Policy, which principal and interest shall be deemed past due and not to have been paid), with interest thereon as provided in this Ordinance and the Refunding Bond, but only from the sources

and in the manner provided herein for the payment of principal of and interest on the Bonds to Holders, and will otherwise treat the Bond Insurer as the owner of such rights to the amount of such principal and interest.

(g) In connection with the issuance of additional Bonds, the Town shall deliver to the Bond Insurer a copy of the disclosure document, if any, circulated with respect to such additional Bonds.

(h) Copies of any amendments made to the documents executed in connection with the issuance of the Refunding Bonds which are consented to by the Bond Insurer shall be sent to Standard & Poor's Corporation.

(i) The Bond Insurer shall receive notice of the resignation or removal of the Paying Agent and the appointment of a successor thereto.

(j) The Bond Insurer shall receive copies of all notices required to be delivered to Bondholders and, on an annual basis, copies of the Town's audited financial statements and annual budget. Any notice that is required to be given to a Bondholder or to the Paying Agent pursuant to this Indenture shall also be provided to the Bond Insurer. All notices required to be given to the Bond Insurer shall be in writing and shall be sent by registered or certified mail.

(k) The Town agrees to reimburse the Bond Insurer immediately and unconditionally upon demand, to the extent permitted by law, for all reasonable expenses, including attorneys' fees and expenses, incurred by the Bond Insurer in connection with (i) the enforcement by the Bond Insurer of the Town's obligations, or the preservation or defense of any rights of the Bond Insurer, under this Ordinance and any other document executed in connection with the issuance of the Refunding Bonds, and (ii) any consent, amendment, waiver or other action with respect to this

Indenture or any related document, whether or not granted or approved, together with interest on all such expenses from and including the date incurred to the date of payment at Citibank's Prime Rate plus three percent (3%) or the maximum interest rate permitted by law, whichever is less. In addition, the Bond Insurer reserves the right to charge a fee in connection with its review of any such consent, amendment or waiver, whether or not granted or approved.

Sec. 25. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith, except the ordinances authorizing the Refunded Bonds, are hereby repealed; provided, however, that this Ordinance shall not be construed or adversely affecting the rights of the owners of the Refunded Bonds.

Sec. 26. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Ordinance.

Sec. 27. Effective Date. This Ordinance shall become effective upon its adoption and proper publication in accordance with Indiana law. All ordinances or parts thereof in conflict herewith are hereby ordered repealed.

ALL OF WHICH IS ORDAINED THIS 10 DAY OF April, 2006, BY THE  
WESTFIELD TOWN COUNCIL, HAMILTON, INDIANA.

## WESTFIELD TOWN COUNCIL

### Voting For

### Voting Against

### Abstain

\_\_\_\_\_  
Teresa Otis Skelton

\_\_\_\_\_  
*Jack Hart*  
Jack Hart

\_\_\_\_\_  
*David Mikesell*  
David Mikesell

\_\_\_\_\_  
*Bob Smith*  
Bob Smith

\_\_\_\_\_  
*Ronald W. Thomas*  
Ron Thomas

\_\_\_\_\_  
Teresa Otis Skelton

\_\_\_\_\_  
Jack Hart

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David Mikesell

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Bob Smith

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Ron Thomas

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Teresa Otis Skelton

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Jack Hart

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David Mikesell

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Bob Smith

\_\_\_\_\_  
Ron Thomas

ATTEST:

\_\_\_\_\_  
*Cindy Gossard*  
Clerk-Treasurer, Cindy Gossard

This ordinance prepared by  
Sue A. Beesley, Bingham McHale